

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

CHRISTOPHER LEE LINN,

Petitioner,

v.

**CIVIL ACTION NO.: 3:17-CV-29
CRIMINAL ACTION NO.: 3:16-CR-4
(GROH)**

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER ADOPTING
AMENDED REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Amended Report and Recommendation of United States Magistrate Judge James E. Seibert. ECF No. 61 in 3:16-CR-61. Pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure, this action was referred to Magistrate Judge Seibert for submission of a proposed Report and Recommendation. Magistrate Judge Seibert filed his Amended Report and Recommendation on December 12, 2017, whereby he recommended that the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence be denied and dismissed as to Ground 1 and Ground 2. He further recommended that an evidentiary hearing be held solely on the issue raised in Ground 3.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Here, objections to Magistrate Judge Seibert's Report and Recommendation were due within fourteen (14) days after being served with a copy pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. The Petitioner accepted service on December 18, 2017. ECF No. 64. Therefore, objections were due on or before January 5, 2018. To date, no objections have been filed. Accordingly, the Court will review Magistrate Judge Seibert's Report and Recommendation for clear error.

Upon careful review and finding no clear error, the Court **ORDERS** that Magistrate Judge Seibert's Amended Report and Recommendation [ECF No. 61 in 3:16-CR-4] is hereby **ADOPTED** for the reasons more fully stated therein. The Petitioner's § 2255 Petition [ECF No. 43 in 3:16-CR-4] is **DENIED** and **DISMISSED WITH PREJUDICE** on Grounds One and Two. The Court reserves ruling solely on the issue of whether the Petitioner instructed his counsel to file an appeal, the issue raised in Ground Three of the petition.

The Court further **ORDERS** that Magistrate Judge Seibert's Report and Recommendation [ECF No. 60 in 3:16-CR-4] be **TERMINATED AS MOOT**.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the Petitioner a Certificate of Appealability, finding that he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record herein and to mail a copy to the pro se Petitioner by certified mail, return receipt requested, to his last known address as shown on the docket sheet.

DATED: January 23, 2018



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE